

REMARKS

As was apparent from the Remarks in the last Amendment, Claim 33 was intended to be substantially identical to prior claim 30 but with the reference to compound 23 being deleted. Inadvertently, reference to that compound was not eliminated. That previously intended deletion has now been made (as indicated by the double brackets before and after the formula) and it is respectfully submitted that this claim is free of the cited prior art and withdrawal of the rejections under 35 USC § 102 is respectfully solicited.

It is noted that there was no rejection of claims 34-38 on any grounds in the current Office Action.

The partial withdrawal from consideration of claim 33 is not understood. There was an election of an ultimate species, namely compound 28, but how that compound could encompass or not encompass compounds having a different structure is not apparent. In any event, an applicant is entitled to have a generic claim covering an elected species examined and claim 33 is such a generic claim. As a result of the elimination of compound 23, it is respectfully submitted that the full scope claim 33 as presented is in condition to be allowed.

Reconsideration of the determination that claims 39-45 (amended above to correct an obvious typographical error) are directed to a non-elected invention is respectfully requested. In that connection, it is respectfully pointed out that this application is a national phase of a PCT application and therefore the rules applicable to unity of invention (and not restriction) control. Unity exists when there is a single general inventive concept under PCT Rule 13.1 which, under PCT Rule 13.2, means the claims have the same or a corresponding special technical feature. All of the compounds of claim 33 are capable of reducing the virulence in Gram-negative bacteria

having a type III secretion (TTS) system. Accordingly, a special technical feature and hence unity is present.

The Office Action states that claims 39-45 are "independent or distinct" (which is an application of restriction rather than unity practice, and not proper here) because "the method of using the compounds in claim 33 was not presented in the original claims." It is respectfully pointed out that this assertion is not correct. In that connection, the attention of the Examiner is invited to the definition of Group III ("a method of decreasing virulence in Gram-negative bacteria") in the Office Action of August 28, 2006.

The Examiner will also note that in the response filed October 27, 2006, the separation of Group III from the elected group was traversed. Thereafter, the separation of Group III was attempted to be justified on the grounds that the special technical feature had to be in all groups and not in less than all groups. No authority for the "less than all" justification was cited and it is respectfully submitted that there is none. In any event, the traversal of the unity requirement was continued in the next response coupled with limited the claims to only the examined group and Group III, thereby making the justification moot. Under these circumstances, it is respectfully submitted that withdrawing claims 39-45 on the grounds that they were constructively non-elected by the original presentation of claims has no applicability here.

It is also submitted that consideration of claims 39-45 at this time does not place an undue burden on the Office here. The compounds themselves have been examined and found to be novel and unobvious. Their properties, which are inseparable from the compounds themselves, MPEP 2141.02(V), include reducing the virulence in Gram-negative bacteria having a type III secretion (TTS) system, are

unexpected. Accordingly, these claims need only be examined for compliance with § 112 and they obviously satisfy the requirements of that section.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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